



**STATE OF MICHIGAN**  
**OFFICE OF THE GOVERNOR**  
**LANSING**

**JOHN ENGLER**  
**GOVERNOR**

**July 27, 2000**

**Mr. John H. Thompson**  
**Associate Director for Decennial Census**  
**Bureau of the Census**  
**Suitland Federal Center, Suitland and Silver Hill Roads**  
**Building 2, Room 3586**  
**Suitland, MD 20233**

**Re: 15 CFR Part 101, Docket No.: 000609172-0172-01**

**Dear Mr. Thompson:**

I write to comment on 15 CFR part 101, the Commerce Secretary's proposed delegation to the Director of the Census of the Secretary's authority to decide the method of calculating populations reported to the states. As explained below, this proposed rule must be rejected as it contemplates an improper delegation of authority. Furthermore, the proposed rule would virtually ensure that a critical decision affecting the reliability of census data would be made without input from independent scientific experts.

Relevant federal law, 13 U.S.C. §§ 141(c) and 195, vests in the Secretary the authority to determine the methodology of calculating the tabulations of population reported to states and localities, including the propriety of utilizing the statistical method known as "sampling." Proposed 15 CFR part 101 not only attempts to vest this congressionally delegated authority in another individual, but amazingly provides that, despite the language of the statute, the Secretary may not review, reconsider or reverse the Director's decision. Thus, in the face of a congressional mandate that the Secretary has the authority and bears the responsibility for this crucial decision, the Department, by rule, would remove this authority so that a decision made by the Director today could be irreversible.

This proposed delegation to the Director of the Census is improper and illegal. Congress specifically vested this discretionary decision in the Secretary of Commerce by statute. When Congress delegates the authority to make a discretionary decision to a specific official, that official cannot simply delegate the

final decision-making authority to another individual. Courts look to legislative intent to determine whether an official can delegate a duty. See United States v. Giorando, 416 US 505 (1974); Fleming v. Mohawk Wrecking and Lumber Co., 331 US 111 (1947); Ashwood Manor Civic Ass'n v. Dole, 619 F Supp 52 (DC Pa 1985). There is no evidence in the relevant legislative history demonstrating any congressional intent to permit the Secretary to delegate this critical decision to another individual. Furthermore, this proposed rule would delegate not simple administrative duties but the final decision of the agency on an important issue. Final agency decisions cannot be sub-delegated by the official that Congress authorized to make the decisions. See Michigan Dep't of Education v. United States Dep't of Education, 875 F2d 1196 (1989); Reclo, Inc. v. Consumer Product Safety Commission, 391 F Supp 841 (SD Tex 1975).<sup>1</sup>

The proposed rule is troubling not only for its illegality, but also because it would require the Director to rely upon the recommendations of the Executive Steering Committee for A.C.E. Policy. The members of this committee are, in many cases, the very individuals who have invested their careers in the creation of the statistical adjustment methodology they are supposed to judge. As well intentioned as these individuals may be, they have already made a decision regarding the viability of the methodology, likely colored, at least subconsciously, by their significant personal investment in its future. Recommendations concerning the use of sampling should instead be made by independent experts in the field, who can more objectively review the methodology. In fact, the Director of the Census himself has already issued an evaluation of the statistical methodology, in which he asserts its viability.

The need for independent experts is amply illustrated by the concerns numerous experts have expressed regarding the sampling methodology created by the Bureau. Enclosed, for your review, are papers prepared by Mr. Kenneth Darga, Senior Demographer for the Michigan Department of Management and Budget. Additional scientific criticism of the Bureau's sampling plan may be found at [www.stat.berkeley.edu/users/stark/census](http://www.stat.berkeley.edu/users/stark/census).

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<sup>1</sup> In Michigan Dep't of Education, the court upheld a delegation of authority, but did so solely because the Secretary retained the authority to review and ratify the delegated decisions. The rule proposed in this case, however, states that the Secretary would relinquish all authority to review or reverse the decision by the Director of the Census. The Director would thus be granted the authority to make the final decision. Such a delegation is improper.

John H. Thompson

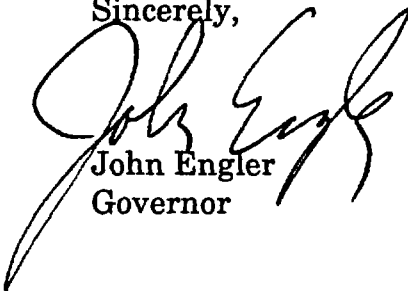
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Unfortunately, the rule proposed by the Department of Commerce does not provide for the consideration of the views of any independent experts, but instead would have the Director rely solely on Bureau employees to make a crucial decision in which those employees have a vested interest. This deficiency in the proposed rule should cause the rule to be rejected.

For the reasons stated above, I urge the Department to reject the proposed rule concerning the methodology of calculating tabulations of population to be reported to states and localities. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "John Engler", written over the printed name and title.

John Engler  
Governor

JE/rlb/jp

Enclosures

cc: Michigan congressional delegation  
Rep. Dan Miller  
Sen. Abraham  
Sen. Levin

With his comments on the Proposed Rule, Governor Engler enclosed the following:

**Enclosure 1:**      **File Name:** [Darga - 1](#)

A Paper entitled:

"Responses to Questions from the Honorable Carolyn B. Maloney on Census Undercount Adjustment"

written by:

Kenneth Darga, Senior Demographer, Michigan Department of Management and Budget,  
June 19, 1998

**Enclosure 2:**      **File Name:** [Darga - 2](#)

Two Papers entitled:

"Two Papers on Census Undercount Adjustment: Straining Out Gnats and Swallowing Camels: The perils of Adjusting for Census Undercount; Quantifying Measurement Error and Bias in the 1990 Undercount Estimates"

written by:

Kenneth Darga, Senior Demographer, Michigan Department of Management and Budget,  
April 29, 1998

**These files may be viewed or downloaded through your web browser.**